

ing been set up shall be transmitted to the secretary of the territory with the return of the number of persons, and in case any sheriff shall fail to make such proof to the secretary of the territory as aforesaid, he shall forfeit the compensation allowed by this act for the same.

Secretary to furnish instructions, &c. to the sheriffs.

SECTION 8. *And be it further enacted,* That the secretary of the territory shall be and hereby is authorized and required to transmit to the sheriffs of the several organized counties in this territory regulations and instructions pursuant to this act for carrying the same into effect and also the forms contained therein of schedule to be returned.

Approved December 30, 1837.

## No. 54.

AN ACT for the partition of the half breed lands, and for other purposes.

WHEREAS, it is expedient, in order to the settlement of that tract of land lying between the Mississippi and Des Moines rivers, commonly called the "half breed lands," which was reserved for the half breeds of the Sacs and Fox tribes of Indians, by a treaty made at Washington city, between the United States and those tribes, on the fourth of August, 1824, which was released to said half breeds with power to convey their rights, &c. by act of congress approved the 30th of June, 1834, that the validity of the titles of the claimants should be determined, and partition of said lands among those having claims should be made, or a sale thereof, for the benefit of such valid claimants: Now, therefore,

Claimants to make application within one year, and how.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That all persons, claiming any interest in said lands under said treaty and act of congress, are hereby required within one year from the passage hereof, to file with the clerk of the district court of the county of Lee, Wisconsin territory, a written notice of their respective claims, designating the half breed under which they respec-

tively claim, and the extent of their claims; which notice shall be accompanied with a true copy of all the title papers, and deeds relating to the rights therein set forth.

SECTION 2. The following named persons, to wit: Commissioners. Edward Johnston, Thomas S. Wilson and David Brigham are hereby appointed commissioners for the purpose of taking and receiving the testimony concerning the validity of claims, presented and filed, each of whom shall receive six dollars per diem, for each day actually engaged in the discharge of his duties.

SECTION 3. The said commissioners before entering upon their duties, shall take an oath well and faithfully to discharge the same, and on application of any party interested, the court may rule said commissioners to report their proceedings; and upon proof of neglect of duty, or misconduct, the judge of said court may remove any of the said commissioners; in which case, as on the occasion of the death or resignation of said commissioners or any of them, or in case of a vacancy in said board from any other cause, the governor of the territory shall appoint others to supply the vacancy, who shall be qualified as aforesaid. Oath. May be removed.

SECTION 4. The said commissioners shall commence their duties at the town of Montrose, in Lee county, Wisconsin territory, on the first Monday in May 1838; at which time and place they shall proceed to investigate the validity of said claims, in the order in which they have been filed with the clerk of the district court of said county, upon whatever legal evidence, written or oral, that may be produced for and against the same; and the commissioners shall have the testimony so taken reduced to writing. And the clerk of the said district court is hereby required to deliver to the said commissioners all notices, copies of title papers, and documents, filed with him in pursuance of the first section of this act. Manner of investigating claims.

SECTION 5. The said commissioners shall have authority to adjourn from time to time, as they, or a majority of them, shall deem proper and expedient; and as soon as the testimony for and against the claims presented shall have been had and obtained, so as to enable the commissioners to report, they shall proceed to make up a report in writing to the district court of the county of Lee, stating therein the names and num- Commissioners may adjourn. Must report to the district court.

ber of the half breeds, originally entitled to the said land, under the treaty and act of congress before mentioned, the names of the owners at the time said report shall be made, with the proportions to which they are respectfully entitled, and the name of the half breed under which each of the said owners claims his or her right, together with all the evidence upon which these facts and opinions are founded; and said report when filed shall be open to the inspection of any person interested.

May administer oaths.

SECTION 6. The said commissioners shall have power and authority to administer oaths, and take affidavits, and to the same legal effect as the same may by the usages of law be administered or taken, by the judge of the said district court, in all matters relating to, or touching, in any wise, the proceedings to be had before said commissioners. And they are hereby authorized to issue commissions for taking depositions of witnesses residing out of the territory, to be received in evidence before the said commissioners, in the same manner as the district court of the said county of Lee may or can by law now do.

Take depositions

and issue subpoenas.

SECTION 7. The said commissioners shall have authority to issue subpoenas, and other process, to compel the attendance of witnesses, in the same manner as the district court of any of the counties of this territory may lawfully do.

Judge of district court to give judgment.

SECTION 8. The judge of the district court of the county of Lee shall give judgment at the next term of said court immediately succeeding the filing of the report of said commissioners, in favor of the claimants, for the amount to which they may appear to be respectively entitled, according to said report, unless on or before the fourth day of said term exceptions shall be filed against said report, or any part thereof: *provided*, that judgment shall not be entered at any term of the said court, unless said report, and the evidence supporting the same, shall have been filed with the clerk of the district court of the county of Lee, and public notice given of such filing at least sixty days before the first day of said term.

Provido.

When question to be tried in the district court.

SECTION 9. If exceptions should be filed by any person interested, within the time appointed, the decision of the question or questions, embraced in such exceptions, shall be made by the said district court, in

the same manner as if a petition for partition had been duly made to the said court, and notice of service duly proved under the general provisions of the act of the legislative council of Michigan, passed the 12th day of April, 1827, entitled "an act to provide for the partition of lands;" and the same proceedings shall be had with regard to trial, judgment, and removal by certiorari, or writ of error, as if the proceedings had been regularly commenced in the said court.

SECTION 10. The judge of the district court of the county of Lee, is hereby authorized to hold a special term or terms, at such time or times, as he may see fit to adjourn, for the purpose of hearing and deciding upon any question, arising from exceptions filed to the report of the said commissioners. Special term.

SECTION 11. All persons claiming any interest in said lands, under said treaty and act of congress, who shall not file their claims as herein required, shall be forever barred from setting up any right in said lands or in the proceeds of the sale thereof: *provided*, that any original half breed, establish his claim under the proceedings herein authorized, and the residue of said right remain unrepresented before the commissioners and the court, that said right of such half breed shall be considered as valid, and the portion of the sales due and coming to such unrepresented interest, shall be retained by the court, to be invested under its direction, in some safe state stock, bearing interest, and as required by the fifth section of this act. And at the expiration of that time, the balance, if any should remain, shall be paid into the treasury of the territory, or state, in which the said half breed tract may at that time be situated, to be held by the said state or territory, in trust for such absent owners as may at any time hereafter establish their claims, to be paid to the party or parties establishing the right thereto before the said court within three years after the filing of the report of the said commissioners. Time limited for presenting claims.

SECTION 12. Immediately after judgment shall have been given, as aforesaid, upon all the claims presented, the following named persons, to wit: John Walsh, of St. Louis, Jeremiah Smith and Antonie LeClaire, of Wisconsin, Samuel Marsh, of New York, and Isaac Galland, of Illinois, or a majority of them, Proviso.

Commissioners of sale.

are hereby authorized to proceed to make sale of said lands, from time to time, according to the judgment or order of the court, and to make surveys and do all things under the direction of the court necessary or proper for making such sales as they shall report their proceedings from time to time to the court, and shall, on receipt of the consideration of such sales, and on ratification of the report of them, make, execute, acknowledge, and deliver to the purchasers, proper deeds for the lands purchased, which shall be effectual to vest in the respective purchasers the absolute title in fee simple, in severalty of the lands so sold and conveyed, free and clear of all right and claim, of all persons under said treaty and act of congress.

May sell by the direction of the court.

SECTION 13. The said court is authorized to cause the said lands, or any part of them, to be sold by said commissioners of sale appointed by the preceding section, at such times and places, on such notices, and in such quantities, as the court in its discretion may appoint; and may cause surveys to be made, if necessary, and towns to be laid out, &c: *provided*, that sales shall (except as is provided in section 17) be made, at public vendue, and for so much cash down as the court may deem reasonable in order to raise a fund to pay all the expenses of the proceedings, sales and expenses herein authorized and required, and the balance on a reasonable credit. And the said court may ratify, or disapprove, of any report or proceedings, of said commissioners, and set the same aside, and order such further proceedings as may seem reasonable and for the advancement of justice upon exceptions filed and good cause shown by some party interested, at the time at which said commissioners may make report on the matter excepted to.

Terms of sale.

If purchasers fail to comply.

SECTION 14. If any purchaser at such sale, shall fail to comply with the terms of the sale by not making the cash payment, or giving the security required, said sale shall be utterly null, and the commissioners of sale may immediately put up the lands again for sale to the highest bidder. And if there be a loss on such second sale the non-complying purchaser, who has caused such loss, shall be responsible therefor, and may be proceeded against by the commissioners of sale in their name, for the difference, in any court having jurisdiction.

SECTION 15. The said commissioners of sale shall settle with and account to the claimants, for the proceeds of said sales, when thereto required, either by a general or special order of the court. And in case any claimant is a purchaser at public sale, his receipt for the amount of his purchases (except the cash payment which is required to be made by the claimant as well as others) shall be a good voucher to the commissioners: *provided*, the same shall not exceed, when added to the cash payment, the amount of such claimant's interest in the sales made.

Settlement with claimants.

Proviso.

SECTION 16. The costs and expenses of said proceedings, shall be paid by said commissioners out of the proceeds of said sales, comprehending the costs of necessary surveys, compensation to the commissioners, and their fees of the sheriff, clerks of the court, witnesses, &c. And the court is authorized to audit and allow, any reasonable costs, charges and expenses; and that the clerk of the said court, sheriffs, witnesses, and other officers, shall be paid the same fees for services, required hereunder, as he or they is or are allowed, in other similar or like cases. And if any person being a claimant or otherwise, shall make advances, of any such fees and charges, the same shall be refunded to him: *provided, however*, that nothing herein contained shall be so construed, as to entitle any unsuccessful claimant to costs.

How expenses to be paid.

Proviso.

SECTION 17. It shall be lawful for persons, holding possession of or residing on particular portions of the said "half breed lands," at the time of the passage of this act, (such persons being rightful owners of an individual interest in the said "half breed tract" at the time of the passage of this act,) to file notice of the situation, extent, and boundaries, of the land so occupied or possessed by them, as is provided for in the first section of this act, with an affidavit thereof, and of the improvements thereon. The commissioners authorized to be appointed by the second section of this act, shall then either upon the examination of witnesses or otherwise, make a fair valuation and appraisalment of the said lands so occupied or possessed, and of the improvements thereon, and upon confirmation thereof by the said court, the commissioners of sale are hereby authorized and required, to execute and deliver to the said persons, a good and valid con-

Rights of resident claimants.

veyance for the portions which they may respectively occupy or possess, upon their complying with the terms and conditions of sale, as established by the commissioners, and the said court, within thirty days after the said valuation, may be confirmed by the said court. And upon the said persons failing to comply with the terms and conditions as above specified, within the time limited, the commissioners shall proceed to sell the same as other lands are authorized to be sold by this act, at public sale to the highest bidder, reserving however to the said persons the valuation of the improvements thereon, if the proceeds of the said lands should amount to the valuation so put upon the improvements, and if not, then the whole amount of such sale shall be reserved for the payment of said improvements, but no more shall be paid therefor.

District court to have exclusive jurisdiction.

SECTION 18. The jurisdiction of the said court, in the matters herein above referred to it, shall be exclusive, and no proceeding shall be instituted or sustained in that or any court, either at law or in equity, under the general law relating to the partition of lands, for the purpose of effecting a partition or sale of the said lands; it being understood however, that the provisions of the general law relating to the partition of lands, shall be extended over the subject and parties, provided for in this act, so far as the same may be applicable, and aid in the furtherance of the objects of the present act. And the guardians of all minors, and persons of unsound mind, appointed according to law, shall be and are hereby authorized, in behalf their respective wards, to do and perform any matter or thing respecting the division and sale of any lands, tenements, and hereditaments, as herein directed, which shall be binding on such ward, and deemed as valid to every purpose, as if the same had been done by such wards after their disabilities had been removed.

Powers of guardians.

Rights of person advancing money for taxes.

SECTION 19. When any legal tax, or levy shall be assessed or legally payable out of said lands, or any part thereof, being unsold, it shall be lawful for any person to advance the amount thereof, to the proper collector, who shall thereupon deliver to such person a certificate therefor; specifying the amount of the tax, the property on which assessed, and certifying

that said sum is to bear interest from that date till paid, at the rate of eight per centum per annum ; which sum shall have that rate of interest, from that date, till paid, in favor of such person and his representatives, or assigns, which said certificate shall be paid when presented to said commissioners, out of the money received by said sales, and such certificates shall be a lien upon the land until payment thereof.

SECTION 20. Any person interested may commence suit in any court having jurisdiction, against any trespasser or trespassers, on said lands, or any part thereof, in the name of the owners of the Sac and Fox half breed lands, to recover damages for such trespasses, and prosecute the same to a recovery on execution, and the amount recovered shall belong to the person so commencing and prosecuting the suit, who shall be responsible for the costs. And it shall not be necessary to specify in such suit the names of said owners as plaintiffs, but in other respects such suits should be conducted as similar suits in other cases, and damages assessed and recovered on the same principles : *provided*, that if said commissioners of sale shall cause such suits to be prosecuted, any expenses on their part may be paid out of the proceeds of said sales ; and *provided*, that no such suits shall be brought, for a trespass committed on any part of said land, after the same has been sold and conveyed by the commissioners.

Suits against trespassers.

Provido.

SECTION 21. The said commissioners of sale, before entering upon their duties, shall take an oath faithfully to discharge their duties as commissioners, and shall give bond and security, to be approved of by the judge of the district court of the said county of Lee, in such sum as the judge shall deem reasonable, for the faithful discharge of their duty, under this act, and for accounting and paying over the proceeds of any sales made agreeably to the provisions of this act. And on application of any party interested, the court may rule the said commissioners, or any of them, to give other securities, or in a larger amount ; and upon proof of neglect of duty, or misconduct, or upon failure to give the requisite security, the judge of the said court may remove any of said commissioners, in which case, as on the occasion of the death or resignation of said commissioners, or any of them, or in case of a vacancy in said board from any other cause, the judge shall ap-

Oath and bond of commissioners of sale.

Vacancy, how filled.

point others to supply the vacancy, who shall be qualified and give bond as aforesaid.

In case of joint tenants and trustees.

SECTION 22. If any person interested in said property should hold their interest therein as joint tenants or trustees, for the use of any other person or persons, it shall and may be lawful for the said court, to enter judgment or decree in favor of such trustee, for the amount of interest to which they may be jointly entitled, in that character, and to appropriate the proceeds of the sales of the lands to said trustees in accordance with said judgment or decree—first paying, however, the debts which may be owing to any person or persons, contracted by the said trustees, or either of them, or by the *cestui que trust*, or either of them, in the purchase of the interest or any part thereof, adjudged or decreed to the said trustees, out of the share of the money which said trustees would be entitled to receive from the proceeds of sale.

Publication of this act.

SECTION 23. It shall be the duty of the secretary of the territory, to have an attested copy of this act published in two months after the passage thereof, in a newspaper published in each of the following places, to-wit: Burlington, Wisconsin territory, St. Louis and Liberty, Missouri, Vandalia and Alton, Illinois, once a week for three months, successively, affidavits of which fact shall be filed among the proceedings of said court; and the expense of said printing shall be paid out of the proceeds of the sales of said land, as other expenses are paid.

SECTION 24. Nothing in this act shall be so construed as to give any power or authority to any of the commissioners appointed under this act to exercise any authority over any lands excepting those included within the line now known and designated as the half breed lands, and which terminates on the Mississippi river near the town of Fort Madison.

Approved January 16, 1838.

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### No. 55.

AN ACT to establish and regulate ferries in the county of Milwaukee and the counties thereto attached for judicial purposes.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That all fer-